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HONORABLE WHITMAN L. HOLT

HEARING DATE: APRIL 17, 2024
HEARING TIME: 10:30 a.m. PST
LOCATION: Telephonic

7 Bernard D. Bollinger, Jr. (CA SBN:
8 132817)*
9 BUCHALTER
10 1000 Wilshire Blvd., Suite 1500
11 Los Angeles, California 90017
12 Telephone: (213) 891-0700
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*Admitted *Pro Hac Vice*

Counsel to Debtors and Debtors in
Possession

11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF WASHINGTON

13 In re:

14 ICAP ENTERPRISES, INC., *et al.*,

15 Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

16 **DECLARATION OF BERNARD D.
17 BOLLINGER, JR. IN SUPPORT OF
18 BUCHALTER'S REPLY IN
19 SUPPORT OF ITS SUPPLEMENTAL
20 EMPLOYMENT APPLICATION**

21
22 ¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

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BUCHALTER

1420 FIFTH AVENUE, SUITE 3100
SEATTLE, WA 98101-1337
TELEPHONE: 206.319.7052

I, Bernard D. Bollinger, Jr., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief.

1. I am a shareholder with the law firm of Buchalter, a Professional Corporation (“Buchalter”), attorneys of record for the above-captioned debtors and debtors in possession (“Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”). I submit this declaration in support of *Buchalter’s Reply In Support of Its Supplemental Employment Application* [ECF No. 750] (the “Reply”).

8 2. Buchalter ran a conflict check regarding Umpqua on September 21,
9 2023 at 2:01 p.m. The conflict check revealed concurrent representation of Umpqua
10 on unrelated matters. This connection was mistakenly omitted from Buchalter's
11 initial Rule 2014 disclosures, including my declaration in support of Buchalter's
12 employment application.

13 3. As a result of the conflict check, and the appearance of Umpqua as a
14 concurrent representation, Buchalter attorneys were aware that Umpqua was being
15 concurrently represented and actively pursued mechanisms to limit the scope of their
16 representation as a precaution against conflicts of interest.

17 4. Those mechanisms included the prepetition term sheet entered into by
18 and between Lance Miller, on behalf of the Debtors, Chris Christensen, the Debtor's
19 former CEO and/or Manager, as applicable, and John Bender, on behalf of the Ad
20 Hoc Noteholder Group, which culminated in the Cooperation Agreement that
21 articulated the roadmap that has been followed by the Debtors' professionals since
22 the inception of these Chapter 11 Cases.

23 5. On October 12, 2023, a Buchalter attorney, on behalf of the Debtors,
24 informally requested bank statements from Umpqua's then counsel. A copy of the
25 email to then counsel for Umpqua requesting these records and the related follow up
26 email is attached to this declaration as Exhibit 1. The Buchalter time entries
27 referenced in the Umpqua Opposition concerned efforts to close prepetition bank

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1 accounts in accordance with a directive of the UST and initial attempts to determine
2 whether Umpqua would prefer that a subpoena be obtained before business records
3 could be turned over. When then counsel for Umpqua failed to respond to in
4 connection with these informal requests for documents, recognizing the agreed upon
5 limitations to the scope of its employment, Buchalter transferred the pursuit of those
6 records to counsel for the Committee.

7 6. Since that time, a significant focus of work performed by Buchalter
8 attorneys concerned the liquidation of the Debtors' real estate portfolio.

9 7. Once it became increasingly likely that the Debtors would pursue a
10 Ponzi scheme finding in order to obtain additional financing, Buchalter attorneys
11 worked on how the sources and uses analysis might be used to generate funds for the
12 Debtors' estate. These efforts included legal research related to the general contours
13 of Ponzi schemes, the Ponzi presumption, and its impact upon related fraudulent
14 transfer claims.

15 8. I have caused a search of Buchalter's records to have been conducted
16 and have been unable to locate any contractual obligation with Umpqua requiring a
17 conflict waiver from Buchalter in the event of concurrent representation.

18 9. Buchalter has voluntarily removed itself from further involvement in the
19 pending Ponzi scheme findings in an attempt to address concerns raised by Umpqua.

I declare under penalty of perjury under the laws of the state of California that
the foregoing information is true and correct.

22 DATED this 16th day of April, 2024 at Los Angeles, California.

/s/ *Bernard D. Bollinger, Jr.*
Bernard D. Bollinger, Jr.

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EXHIBIT 1

Martin, Shirlene

From: Tarazi, Khaled
Sent: Wednesday, October 18, 2023 9:16 AM
To: Keith Ketterling
Cc: Alec Finnell; Gurule, Julian
Subject: RE: iCap - Umpqua Account Statements

Hi Keith, circling back on this. Please update when can. Thank you.

Buchalter

Khaled Tarazi
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From: Tarazi, Khaled <ktaarazi@buchalter.com>
Sent: Thursday, October 12, 2023 6:33 PM
To: Keith Ketterling <KKetterling@stollberne.com>
Cc: Alec Finnell <aafinnell@stollberne.com>; Gurule, Julian <jgurule@buchalter.com>
Subject: iCap - Umpqua Account Statements

Keith,

Per our call earlier, for the CRO/Manager of the iCap entities to fulfill his fiduciary duties to the bankruptcy estates, we will need account statements for each of the iCap entity bank accounts. We need at least the statements for the period going back four years prior to the bankruptcy filings on 9/29/23, but will take any statements beyond that period that are reasonably accessible to the bank. We are making this request in our capacity as counsel to the iCap entities, as customers of Umpqua, so we do not believe a formal, Court-ordered request is necessary. Please let us know what you need from us to facilitate this request. Thank you.

Buchalter

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